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The Honorable S. Arthur Spiegel
United States Senior District Judge
Southern District of Ohio
838 Potter Stewart United States Courthouse
Cincinnati, Ohio 45202

July 14, 2006

Case No: 1:02-cv-00107

RE: Ombudsman

Dear Judge Spiegel:

I am writing to update you on our activities as Ombudsman for the Metropolitan Sewer District Water in Basement Program.

During the spring rainy season we issued a press release which was picked up by the Community Press. An article appeared in the Community Press on April 26, 2006 (copy attached) outlining the WIB Program.

On May 10, 2006, the Ombudsman mailed an update to about 6,300 Hamilton County residents. All property owners who had reported a WIB incident since January 2004 received a copy of the Update. The Update informed residents of the major changes to the WIB Program including the changes to the Prevention Program Covenant and Agreement and the appeals process. The Ombudsman received approximately forty calls from County residents as a result of this mailing.

The Ombudsman has also been involved in Wet Weather Improvement Program planning. The Ombudsman participated in the Long Term Control Plan Update Steering Committee. Once the plan was presented to the public, the Ombudsman attended several of the public comment meetings and handed out fliers and information about the Ombudsman at those meetings.

The Ombudsman also reviewed the draft Wet Weather Improvement Program submitted to the public for comment by MSD. The emphasis of our review was on how the plan affects water-in-basement back ups. We submitted a series of comments and questions related to how the Wet Weather Program is dealing with major WIB incidents.

**APPOINTMENTS
AVAILABLE**

Batavia
Cincinnati
Georgetown
Hamilton
Hillsboro
Lebanon
Middletown
Wilmington



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Finally, as the Court is aware, I am leaving the Legal Aid Society of Greater Cincinnati to take another position out of state. The Legal Aid Society is willing to continue handling the Ombudsman's duties for the Court. Jessica Powell has been chosen to take over the Ombudsman's duties. Ms. Powell has been an attorney at Legal Aid since 2001. She has extensive experience representing clients in a variety of forums including federal court, and before administrative bodies, on issues ranging from federal subsidized housing rights to special education issues.

I appreciate the Court's confidence in appointing Legal Aid and myself to this important role. I am confident that Ms. Powell will continue to expand upon the work started during the first two years of the implementation of the Consent Decree. Please do not hesitate to call should you have questions or concerns. It has been a great honor to serve the Court as Ombudsman for the last two years.

Sincerely,



Gary J. Pieples

Attorney at Law

Ombudsman, MSD Water-In-Basement Program

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GJP/lrf

Enclosure

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Nee Fong Chin
Peter P. Murphy
Jessica Powell



Local News

Wednesday, April 26, 2006; Posted: 11:15 a.m. EDT

MSD program will separate sewage, water

BY LIZ CAREY | COMMUNITY PRESS STAFF WRITER

HAMILTON COUNTY -- When four units in the Rolling Hills Condominium complex in Wyoming flooded with raw sewage, Liz Kanter wasn't sure who to call.

But thanks to the Metropolitan Sewer District's (MSD) Water in Basement program, she said, the units were cleaned up and inhabitable later that April night.

ADVERTISEMENT "I called the Wyoming Police Department and they gave me MSD's number," she said. "It was my concern that these people could not live in their condos because of the sewage. ... That was 7:30 or 8 o'clock at night. ... The cleaning crews came out and they worked until 2 a.m. ... By the next day, the condos were habitable again."

Since Jan. 1, 2004, some 1,200 residents of Cincinnati have had their flooded basements cleaned out at MSD's expense. The Water-in-Basement Customer Service Program, part of a consent decree following a 1999 lawsuit the Environmental Protection Agency filed against the city and the county, is part of a larger sewer system improvement plan called the Wet Weather Program, MSD Director Bob Campbell said.

A comprehensive, long-range plan to reduce sewer overflows and improve public health in Hamilton County, the plan is one of the largest public works projects undertaken in the county's history, Campbell said.

"Implementing the Wet Weather Program is a necessity. It is the right thing to do for our community's future, and it is mandated by state and federal agencies," he said. "We have worked very hard to develop a program that not only meets the state and federal regulations and improves our local water quality, but also is affordable for our rate payers."

The Water-in-Basement Program is a small part of that, he said. Another program, the prevention program, provides homeowners with a plan to prevent further flooding in their homes.

"(The Water-in-Basement Program) only amounts to 2 percent of the (Wet Weather) program, but it is probably one of the most visible, because it does effect our users," he said. "The cleanup is immediate and visible. But a larger part of the program is our prevention program. Prevention is a way to stop it from happening again."

While cleanup is a benefit to the homeowner once a basement has

PUBLIC PROGRAM REVIEW

The Metropolitan Sewer District will hold open houses through Monday, May 15, for the public to review and comment on its Wet Weather Program.

The public comment open houses will be 5 to 8 p.m., with formal presentations given at 5:30 p.m. and repeated at 7 p.m. Information stations will be open throughout the meetings.

Thursday, April 27 - Nathanael Greene Lodge, 6394 Wesselman Road

Wednesday, May 3 - MSD Administrative Complex, 1081 Woodrow St.

Program information is also available on MSD's Web site at www.msdgc.org, and digital copies of the plan can be obtained by calling Laura Williams at 557-7115. Program information will be available at all branches of the Public Library of Cincinnati and Hamilton County. Community members may also request an information packet by calling 557-7115. Comments on the program can be submitted via phone at 557-7134, via e-mail at overflows@cincinnati-oh.gov, or via mail to MSD Wet Weather Program, 708 Walnut St., Cincinnati, Ohio 45202.

WATER IN YOUR BASEMENT?

What to do -- Hamilton County residents or business owners who have water coming up through a floor drain, sink, bathtub or toilet that floods their basements should report the problem to MSD at 352-4900.

What to expect -- Operators are available 24 hours a day, seven days a week to take calls. Customer service representatives will respond usually within four hours. A representative will visit a home or business to determine if the public sewer has caused the flooding.

If the public sewer system caused the flooding, the representative will work with the customer to document the damage and make arrangements for a professional cleanup.

flooded, he said prevention is a way for the program to have ongoing benefit for years to come.

Once a home floods, said Dennis Madden, director of the Water-in-Basement Program, crews from MSD determine whether or not the flooding was due to an MSD problem. If the problem is caused by an MSD issue, MSD takes responsibility and cleans the property. Additionally, in the prevention program, MSD will design a plan to fix the problem, and install it, at no expense to the homeowner.

MSD Supervising Engineer Pete Caldwell said prevention could run the gamut from installing devices in properties, to isolating homes from the mainline sewer.

"We'll look at the house (and its pipes) to see what type of device would protect them. Then we'll design a solution for that house," Caldwell said. "If the homeowner accepts that design and allows us to install it, we would install it at MSD's expense."

In Cheviot, where Safety Service Director Steve Neal said sewer overflow was a big issue for years, the programs are welcome but a long time coming.

"I'm tickled pink that they are finally going to start addressing something that has been a problem for a long time. MSD knew about this for years and never did anything," he said. "I'm happy that they are finally getting to the point they taking care of this."

Neal said calls to his office about flooded basements have decreased. He is not sure if that decrease is related to MSD's new programs.

"The calls have been reduced, and I know they have done some work out here, which I am elated to see because for a long time it was a real problem," he said. "...Last summer just wasn't typical. We didn't have the same kinds of rains that produce that kind of overflow."

But the program is not without its faults, Legal Aid of Cincinnati Senior Attorney Gary Pieples said. As the ombudsman for the Water-in-Basement Program appointed by federal judges in the case, Pieples answers questions or deals with concerns and problems residents may have with MSD's response to a flooded basement.

"What we're getting right now is a lot of the questions related to the legal rights of the homeowner once MSD installs these devises," he said. "What happens at the end of the life of that pump? Who's responsible for replacing that? What we've been able to work out is that at the end of the life of the pump, MSD is responsible for that pump, as long as there is a problem with the sewer system."

Working through the courts, Pieples said he has assisted homeowners in clarifying some of the contractual agreements with MSD and to prevent people from having to sign away their rights.

But, he said, the program is a benefit for homeowners.

"The biggest change, or benefit, is that MSD now acknowledges

If surface flooding, broken water pipes or blocked drains have caused the flooding, MSD is not responsible for the cleanup.

What Is Included -- MSD representatives will set up a contract with professional cleaning services to provide, as necessary, wet vacuuming and removal of water, mop bare floors with cleaning solution and disinfectant, flush out and disinfect plumbing fixtures, remove and dispose damaged property and provide basic carpet cleaning.

MSD Supervising Engineer Pete Caldwell said prevention could run the gamut from installing devices in properties, to isolating homes from the mainline sewer.

and accepts responsibility for problems in the sewer system," he said. "MSD is stepping up and saying some of this is our fault and we're going to step up and take care of this. There are at least several thousand that have faced problems like this over the years."

Accepting responsibility is exactly what MSD did in Kanter's case.

"They could have done all kinds of things," Kanter said. "They could have beat around the bush, but they took immediate responsibility. It could have been an extremely slow process, ... but it was not."

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